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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

DEMOCRATIC PARTY OF HAWAII,

Plaintiff,

vs.

SCOTT T. NAGO, in his official
capacity as Chief Election Officer of the
State of Hawaii,

Defendant.

CIVIL NO. CV13-00301 JMS/KSC

DEFENDANT SCOTT NAGO'S
COUNTER-MOTION FOR
SUMMARY JUDGMENT;
MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFF'S
MOTIONS FOR PRELIMINARY
INJUNCTION AND PARTIAL
SUMMARY JUDGMENT AND IN
SUPPORT OF DEFENDANT'S
COUNTER-MOTION FOR
SUMMARY JUDGMENT;
CERTIFICATE OF COMPLIANCE;
CERTIFICATE OF SERVICE

HEARING DATE: 10/7/13

TIME: 9:00 A.M.

JUDGE: Hon. J. Michael
Seabright

**DEFENDANT SCOTT NAGO'S
COUNTER-MOTION FOR SUMMARY JUDGMENT**

Scott Nago, Chief Election Officer of the State of Hawaii, Defendant, counter-moves for summary judgment. There are no genuine issues of material fact. The Democratic Party of Hawaii, Plaintiff, has failed to carry their burden to demonstrate that Hawaii's open primary is unconstitutional under the First Amendment. As outlined in the attached memorandum, the Party's facial challenge fails under United States v. Salerno, 481 U.S. 739 (1987), and it offers no facts on which an as-applied challenge could be based. Furthermore, the Party fails to demonstrate that their associational rights are *severely* burdened by the open primary, and the State's interests in the open primary meet the relevant standard of scrutiny in any event. The open primary is constitutional.

This motion is filed as a counter-motion under Local Rule 7.9. Because the Party simultaneously moved for a preliminary injunction and for partial summary judgment, the attached memorandum of law serves as an opposition to both of Plaintiff's motions, and as a memorandum in support of Defendant's counter-motion for summary judgment.

This counter-motion is made under Fed. R. Civ. P. 56, Local Rules 7.9 and 56.1, and is based on the attached declarations, memorandum of law, separate

concise statement, and the documents previously filed with this Court.

DATED: Honolulu, Hawaii, September 16, 2013.

Respectfully submitted,

/s/ Deirdre Marie-Iha
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